

Part 13

Action by Member

16-16-1301 Derivative action.

A member may maintain a derivative action to enforce a right of a limited cooperative association if:

- (1) the member demands that the association bring an action to enforce the right; and
- (2) any of the following occur:
 - (a) the association does not, not later than 90 days after the member makes the demand, agree to bring the action;
 - (b) the association notifies the member that it has rejected the demand;
 - (c) irreparable harm to the association would result by waiting 90 days after the member makes the demand; or
 - (d) the association agrees to bring an action demanded and fails to bring the action within a reasonable time.

Enacted by Chapter 363, 2008 General Session

16-16-1302 Proper plaintiff.

- (1) A derivative action to enforce a right of a limited cooperative association may be maintained only by a person that:
 - (a) is a member or a dissociated member at the time the action is commenced and:
 - (i) was a member when the conduct giving rise to the action occurred; or
 - (ii) whose status as a member devolved upon the person by operation of law or the organic rules from a person that was a member at the time of the conduct; and
 - (b) adequately represents the interests of the association.
- (2) If the sole plaintiff in a derivative action dies while the action is pending, the court may permit another member who meets the requirements of Subsection (1) to be substituted as plaintiff.

Enacted by Chapter 363, 2008 General Session

16-16-1303 Pleading.

In a derivative action to enforce a right of a limited cooperative association, the complaint shall state:

- (1) the date and content of the plaintiff's demand under Subsection 16-16-1301(1) and the association's response;
- (2) if 90 days have not expired since the demand, how irreparable harm to the association would result by waiting for the expiration of 90 days; and
- (3) if the association agreed to bring an action demanded, that the action has not been brought within a reasonable time.

Amended by Chapter 378, 2010 General Session

16-16-1304 Approval for discontinuance or settlement.

A derivative action to enforce a right of a limited cooperative association may not be discontinued or settled without the court's approval.

Enacted by Chapter 363, 2008 General Session

16-16-1305 Proceeds and expenses.

- (1) Except as otherwise provided in Subsection (2):
 - (a) any proceeds or other benefits of a derivative action to enforce a right of a limited cooperative association, whether by judgment, compromise, or settlement, belong to the association and not to the plaintiff; and
 - (b) if the plaintiff in the derivative action receives any proceeds, the plaintiff shall immediately remit them to the association.
- (2) If a derivative action to enforce a right of a limited cooperative association is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney fees and costs, from the recovery of the association.

Enacted by Chapter 363, 2008 General Session